

EXHIBIT C

COPY

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 Impulse Marketing Group, Inc.

**UNITED STATES DISTRICT COURT FOR THE
 EASTERN DISTRICT OF WASHINGTON**

JAMES S. GORDON, JR.,

Plaintiff,

vs.

IMPULSE MARKETING GROUP,
 INC.,

Defendant

IMPULSE MARKETING GROUP,
 INC.,

Third-Party Plaintiff,s.

BONNIE GORDON, et al.,

Third-Party Defendants.

No. CV-04-5125-FVS

DEFENDANT'S
 SUPPLEMENTAL RESPONSE
 TO PLAINTIFF'S FIRST
 INTERROGATORIES

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4 **DEFENDANT'S SUPPLEMENTAL RESPONSE TO PLAINTIFF'S FIRST**
5 **SET OF INTERROGATORIES**
6

7 Defendant, Impulse Marketing Group, Inc. ("Impulse" or "Defendant"),
8 pursuant to Rule 26(e) of the Federal Rules of Civil Procedure, hereby supplements
9 its response to plaintiff, James Gordon's ("Plaintiff" or "Gordon") First Set of
10 Interrogatories as follows:

11 **PRELIMINARY STATEMENT**
12

13 Impulse's supplemental responses are made without in any way waiving
14 either: (a) the right to object on the grounds of competency, relevance, materiality,
15 hearsay or any other proper ground, to the use of any information provided in these
16 responses for any purpose in any stage or proceeding in this or any other action; (b)
17 the right to object on any and all grounds, at any time, to any discovery procedure
18 relating to the subject matter of these documents; or (c) the right to assert the
19 attorney-client privilege, the work-product doctrine, or any other privilege or right.
20 Impulse has not completed its discovery or factual investigation in this action.
21 Accordingly, the supplemental responses set forth herein are provided without
22 prejudice to Impulse's right to add, modify, or otherwise change or amend the
23 responses herein in accordance with Rule 26(e).
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28 Defendant is continuing to search for information responsive to Plaintiff's

1 First Set of Interrogatories and, without representing that any such information
2 exists, reserves the right to supplement its responses if and when additional
3 information becomes available. By responding to Plaintiff's First Set of
4 Interrogatories, Defendant does not concede the materiality or relevance of the
5 subject matter of any pf Plaintiff's First Set of Interrogatories and its responses are
6 expressly made subject to, and without waiving or intending to waive, any question
7 or objection as to the competency, relevancy, materiality, privilege or admissibility
8 of its subject matter and/or any documents or information set forth or referred to in
9 response thereto.
10
11
12

13 **GENERAL OBJECTIONS**

14
15 1. Impulse objects to each interrogatory to the extent that it seeks material
16 or information that is privileged as an attorney-client communication. This
17 objection hereinafter will be referred to as the "Attorney-Client Privilege
18 Objection."
19

20 2. Impulse objects to each interrogatory to the extent that it seeks material
21 or information prepared by or developed at the direction of counsel insofar as it is
22 protected and privileged as attorney work product. This objection hereinafter will
23 be referred to as the "Attorney Work Product Objection."
24
25

26 3. Impulse objects to each interrogatory to the extent that it seeks
27 information that is protected as being prepared in anticipation of litigation or for
28

1 trial. This objection hereinafter will be referred to as the "Material Prepared in
2 Anticipation of Litigation Objection."

3
4 4. Impulse objects to each interrogatory to the extent that it seeks
5 information irrelevant to the parties' claims or defenses in this case. This objection
6 hereinafter will be referred to as the "Irrelevancy Objection."

7
8 5. Impulse objects to each interrogatory to the extent that it calls for
9 information that would impose a vexatious and undue burden on the grounds that
10 the request is oppressive and/or is intended to harass the Impulse. This objection
11 hereinafter will be referred to as the "Undue Burden Objection."

12
13 6. Impulse objects to each interrogatory to the extent that it is vague,
14 ambiguous, or otherwise lacks sufficient precision to permit a response. This
15 objection hereinafter will be referred to as the "Ambiguity Objection."

16
17 7 Impulse objects to each interrogatory to the extent that it seeks
18 information outside the allegations of the Complaint in this action. This objection
19 hereinafter will be referred to as the "Overbreadth Objection."

20
21 8. Impulse objects to each interrogatory to the extent that it seeks
22 information that is in Plaintiff's possession. This objection hereinafter will be
23 referred to as the "Plaintiff's Possession Objection."

1 9. Impulse objects to each interrogatory to the extent that it repeats a
2 request made elsewhere in Plaintiff's Demand. This objection hereinafter will be
3 referred to as the "Redundancy Objection."
4

5 10. Impulse objects to each interrogatory to the extent that it seeks
6 information relating to unspecified periods of time outside the scope of Plaintiff's
7 Complaint. This objection hereinafter will be referred to as the "Time Frame
8 Objection."
9

10 11. Impulse objects to each interrogatory to the extent that it seeks
11 information that constitutes a trade secret or proprietary information. This objection
12 hereinafter will be referred to as the "Trade Secret Objection."
13

14 12. Defendant objects to Plaintiff's First Set of Interrogatories insofar as
15 it improperly calls for, or presupposes, a conclusion of law. This objection
16 hereinafter will be referred to as the "Legal Conclusion Objection."
17

18 13. Insofar as any request seeks information falling within the scope of
19 the foregoing General Objections, except as provided above, it is specifically
20 noted below by reference to the General Objection defined herein.
21
22

23
24 **OBJECTIONS AND RESPONSES TO PLAINTIFF'S**
25 **FIRST SET OF INTERROGATORIES**

26
27 INTERROGATORY NO. 1: Set forth each and every insurance agreement covering
28 any and all liability exposure for the defendant, whether or not in your opinion
coverage is afforded for the matter made the subject of this lawsuit, and identify

1 each insurance agreement by the name of the insurance carrier, policy number,
2 limits, and sublimits for Advertising Injury.

3 ANSWER: Defendant asserts the Overbreadth Objection. Subject to and without
4 waiving said objection, Plaintiff is referred to the content contained in Bates Nos.
5 000001-000003 produced to Plaintiff in response to Plaintiff's Request For The
6 Production Of Documents No. 1.

7 _____ S/FLOYD E. IVEY _____

8 FLOYD E. IVEY
9

10 INTERROGATORY NO. 2: [BLANK]
11

12 ANSWER: Given that Plaintiff's Interrogatory No. 2 was left blank, no response
13 is required.

14 _____ S/FLOYD E. IVEY _____

15 FLOYD E. IVEY
16

17
18 INTERROGATORY NO. 3: Identify the person(s) responsible for making decisions
19 regarding the marketing of defendant's products and/or services via email, deciding
20 how emails are created, formatted and sent, and specify the person(s) responsible for
21 deciding to market products and/or services via email.

22 ANSWER: Defendant asserts the Overbreadth and Ambiguity Objection. Subject
23 to and without waiving these objections, Jeff Goldstein is responsible for making
24 decisions regarding the marketing of Impulse's products and/or services via email.

25 _____ S/FLOYD E. IVEY _____
26
27
28

1 FLOYD E. IVEY

2
3 INTERROGATORY NO. 4: Identify the defendant's gross revenue for any and all
4 years that the defendant has marketed products and/or services via email.

5 ANSWER: Defendant asserts the Time Frame, Irrelevancy, Overbreadth and Trade
6 Secret Objections. The information sought will not lead to the discovery of
7 admissible evidence. Bushman v. New Holland, 83 Wn. 2d 429, 433-34 (1974);
8 Felix A. Thillet, Inc. v. Kelly-Springfield Tire Co., 41 F.R.D. 55 (D.P.R. 1966).

9 _____ S/FLOYD E. IVEY _____

10
11 FLOYD E. IVEY

12
13 INTERROGATORY NO. 5: Identify the number, or if the exact number is
14 unascertainable, the approximate number, of email addresses the defendant has
15 marketed products and/or services to by year for each year it has been sending
16 commercial email.

17 ANSWER: Defendant asserts the Time Frame, Irrelevancy, Overbreadth, Undue
18 Burden and Trade Secret Objections. Interrogatory No. 5 is irrelevant to the
19 allegations contained in Plaintiff's Complaint. Plaintiff lacks standing to request
20 information regarding those email addresses not belonging to Plaintiff. As such, the
21 information sought will not lead to the discovery of admissible evidence. Bushman
v. New Holland, 83 Wn. 2d 429, 433-34 (1974); Felix A. Thillet, Inc. v. Kelly-
Springfield Tire Co., 41 F.R.D. 55 (D.P.R. 1966).

22 _____ S/FLOYD E. IVEY _____

23
24 FLOYD E. IVEY

25
26 INTERROGATORY NO. 6: Identify the number of email addresses referenced in
27 the immediately preceding interrogatory that the defendant claims are opt-in email
28

1 addresses, or in some way gave their direct permission to it to send them email
2 advertisements, by the following categories:

- 3 a. number of email addresses the defendant obtained from freeze.com;
4
5 b. number of email addresses the defendant obtained from imustplay.com;
6
7 c. number of email addresses the defendant obtained from the treeloot
8 game;
9
10 d. number of email addresses the defendant obtained from other third
11 parties.

12 ANSWER: Defendant asserts the Time Frame, Irrelevancy, Overbreadth, Undue
13 Burden and Trade Secret Objections. Interrogatory No. 6 is irrelevant to the
14 allegations contained in Plaintiff's Complaint. Plaintiff lacks standing to request
15 information regarding those email addresses not belonging to Plaintiff. As such, the
16 information sought will not lead to the discovery of admissible evidence. Bushman
17 v. New Holland, 83 Wn. 2d 429, 433-34 (1974); Felix A. Thillet, Inc. v. Kelly-
18 Springfield Tire Co., 41 F.R.D. 55 (D.P.R. 1966). Subject to and without waiving
19 these objections, Defendant invites Plaintiff to limit this interrogatory to Plaintiff's
20 email address in accordance with RCW 19.190 et seq.

21 _____ S/FLOYD E. IVEY _____

22 FLOYD E. IVEY

23 INTERROGATORY NO. 7: Please list all internet domain names used and/or
24 registered by the defendants, or used or registered on their behalf by others which
25 use the Who is Privacy Protection (Services) Inc. service offered by eNom Inc., in
26 conjunction with their internet business/activities.

27 ANSWER: Defendant asserts the Time Frame, Irrelevancy, Overbreadth,
28 Ambiguity and Trade Secret Objections. Interrogatory No. 7 is ambiguous as to the
term "defendants" given that Impulse is the only named defendant in this lawsuit.
Further, Interrogatory No. 7 is irrelevant to the allegations contained in Plaintiff's
Complaint. As such, the information sought will not lead to the discovery of

1 admissible evidence. Bushman v. New Holland, 83 Wn. 2d 429, 433-34 (1974);
2 Felix A. Thillet, Inc. v. Kelly-Springfield Tire Co., 41 F.R.D. 55 (D.P.R. 1966).

3 _____ S/FLOYD E. IVEY _____

4
5 FLOYD E. IVEY

6 INTERROGATORY NO. 8: Identify the number of emails each defendant sent to
7 any of the following email addresses:

8 bonnie@gordonworks.com; ;

9 bonniegg@gordonworks.com

10 business@gordonworks.com

11 cash@gordonworks.com

12 emily@gordonworks.com

13 faye@gordonworks.com

14 genesis@gordonworks.com

15 goals@gordonworks.com

16 goals@gordonworks.com

17 gordonworks@gordonworks.com

18 james@gordonworks.com

19 jamila@gordonworks.com

20 jay@gordonworks.com

21 jeg@gordonworks.com

22 jim@gordonworks.com

1 jobs@gordonworks.com

2 jonathan@gordonworks.com

3 links@gordonworks.com

4 localbusiness@gordonworks.com

5 lynkstation@gordonworks.com

6 marketer@gordonworks.com

7 msm@gordonworks.com

8 postmaster@gordonworks.com

9 referral@gordonworks.com

10 sd@gordonworks.com

11 teen@gordonworks.com

12 telecom@gordonworks.com

13 tj@gordonworks.com

14 tommy@gordonworks.com

15 webmaster@gordonworks.com

16
17
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21
22
23 ANSWER: Defendant asserts the Time Frame, Irrelevancy, Ambiguity, Plaintiff's
24 Possession and Overbreadth Objections. Interrogatory No. 8 is irrelevant to the
25 allegations contained in Plaintiff's Complaint. Interrogatory No. 8 is ambiguous as
26 to the terms "each defendant" given that Impulse is the only named defendant in this
27 lawsuit. Plaintiff lacks standing to request information regarding those email
28 addresses not belonging to Plaintiff. In connection with the allegations contained
in Plaintiff's Complaint, Impulse, upon information and belief, did not itself send
any emails to Plaintiff's email address. Upon information and belief, Impulse had

1 no knowledge that noncompliant emails would be sent to Plaintiff's email address.
2 Further, Impulse implements a multi-point business practice to ensure compliant
3 email marketing by its third-party marketers including, but not limited to, obtaining
4 express representations and warranties from its third-party marketers that said third-
5 party marketers will only transmit emails that comply with any and all state and
6 federal laws such as the CAN-SPAM Act of 2003 and applicable state deceptive
7 marketing statutes.

8 _____ S/FLOYD E. IVEY _____

9 FLOYD E. IVEY

10 INTERROGATORY NO. 9: Does the defendant claim that the owners of the email
11 addresses listed in Interrogatory No. 8 opted-in to any of its marketing programs, or
12 in any way granted it direct permission to send commercial emails, and if so, for
13 each such instance of alleged "opt-in" or "permission" please state the following:

- 14 1. the date;
- 15 2. the website at which it was processed;
- 16 3. the website at which it was received;
- 17 4. the email from which each was received;

18 ANSWER: Defendant asserts the Time Frame, Irrelevancy, Plaintiff's Possession
19 and Overbreadth Objections. Plaintiff lacks standing to request information
20 regarding those email addresses not belonging to Plaintiff. In connection with the
21 allegations contained in Plaintiff's Complaint, Impulse, upon information and belief,
22 did not itself send any emails to Plaintiff's email address. Upon information and
23 belief, Impulse had no knowledge that noncompliant emails would be sent to
24 Plaintiff's email address. Further, Impulse implements a multi-point business
25 practice to ensure compliant email marketing by its third-party marketers including,
26 but not limited to, obtaining express representations and warranties from its third-
27 party marketers that said third-party marketers will only transmit emails that comply
28 with any and all state and federal laws such as the CAN-SPAM Act of 2003 and
applicable state deceptive marketing statutes.

_____ S/FLOYD E. IVEY _____

FLOYD E. IVEY

1 INTERROGATORY NO.10. What process(es) does the defendant use to verify or
2 confirm that an email address, whether obtained by itself or from a third party, is a
3 true "opt-in" email address, or that the owner of an email address in some way
4 granted his or her direct permission for the defendant to send him or her email?

5 ANSWER: Impulse asserts the Overbreadth, Irrelevancy and Trade Secret
6 Objections. Subject to and without waiving these objections, if Plaintiff will limit
7 his request, Defendant will consider the revised interrogatory.

8 _____ S/FLOYD E. IVEY _____

9 FLOYD E. IVEY

10 INTERROGATORY NO. 11. Does/did the defendant initiate the transmission of
11 commercial email on behalf of third parties?

12 ANSWER: Defendant asserts the Time Frame and Overbreadth Objections.
13 Subject to and without waving these objections, Impulse occasionally initiates the
14 transmission of commercial email on behalf of third parties.

15 _____ S/FLOYD E. IVEY _____

16 FLOYD E. IVEY

17
18 INTERROGATORY NO. 12. If the response to the preceding interrogatory is in the
19 affirmative, provide the names, addresses, phone numbers, of all such third parties
20 on whose behalf defendant sends, or has sent commercial email for the past 5 years.

21 ANSWER: Defendant asserts the Time Frame, Irrelevancy, Trade Secret and
22 Overbreadth Objections.

23 _____ S/FLOYD E. IVEY _____

24 FLOYD E. IVEY

1 INTERROGATORY NO. 13. Identify any person or entity, including vendors,
2 agents, affiliates, contractors, and subcontractors, that assists or assisted in the
3 transmission of commercial email on the defendant's behalf for the past five years.

4 ANSWER: Defendant asserts the Time Frame, Irrelevancy, Trade Secret and
5 Overbreadth Objections.

6 _____ S/FLOYD E. IVEY _____

7 FLOYD E. IVEY

8 INTERROGATORY NO. 14: Identify all lawsuits to which the defendant has been
9 a party. For each, state:

10 (a) the jurisdiction;

11 (b) the date of filing;

12 (c) the substance of the action; and

13 (d) the disposition of the action.

14
15 ANSWER: Impulse asserts the Irrelevancy and Time Frame Objections.
16 Interrogatory No. 14 is irrelevant to the allegations contained in Plaintiff's
17 Complaint and will not lead to discovery of admissible evidence relative to
18 Plaintiff's Complaint. Bushman v. New Holland, 83 Wn. 2d 429, 433-34 (1974);
19 Felix A. Thillet, Inc. v. Kelly-Springfield Tire Co., 41 F.R.D. 55 (D.P.R. 1966).
20 Subject to and without waiving these objections, Defendant will consider
21 responding to a clarified and more limited version of this interrogatory.

22 _____ S/FLOYD E. IVEY _____

23 FLOYD E. IVEY

24
25 INTERROGATORY NO. 15: Please describe the process by which you obtain "opt-
26 in" email addresses, and identify each and every source of such email addresses.

27
28 ANSWER: Defendant asserts the Time Frame, Redundancy and Overbreadth

1 Objections. Subject to and without waiving these objections, if Plaintiff will limit
2 his request, Defendant will consider the revised interrogatory.

3 _____ S/FLOYD E. IVEY _____

4
5 FLOYD E. IVEY

6 INTERROGATORY NO. 16: Describe any and all efforts made by the defendant
7 or on the defendant's behalf by any person or entity listed in your Answer to
8 Interrogatory No. 13 to ensure that the owners of the email addresses listed in
9 Interrogatory No. 8 were or were not residents of Washington State.

10 ANSWER: Defendant asserts the Irrelevancy and Overbreadth Objections. Further,
11 Plaintiff lacks standing to request information regarding those email addresses not
12 belonging to Plaintiff.

13 _____ S/FLOYD E. IVEY _____

14 FLOYD E. IVEY

15
16 INTERROGATORY NO. 17: Does the defendant own any of the internet domain
17 names from which it sends commercial electronic mail? If so, please state as
18 follows:

19 a. All internet domain names you own; and

20 b. All internet domain names that you do not own that you or any person or
21 entity listed in your Answer to Interrogatory 13 send commercial electronic mail
22 from.

23 ANSWER: Defendant asserts the Irrelevancy, Trade Secret and Overbreadth
24 Objections.

25 _____ S/FLOYD E. IVEY _____

26 FLOYD E. IVEY

1 INTERROGATORY NO. 18: For each internet domain name listed in the Answer
2 to Interrogatory 17 (b), does the defendant have the permission of the owner to use
3 their internet domain name to send commercial electronic mail, whether to or from?

4 ANSWER: Defendant asserts the Irrelevancy, Trade Secret and Overbreadth
5 Objections.

6 _____ S/FLOYD E. IVEY _____

7
8 FLOYD E. IVEY

9 INTERROGATORY NO. 19: Please identify each IP address (or IP address
10 netblock) that the defendant was assigned since 2000. For each, please state:

11 (a) the date it was acquired;

12 (b) whether it is still assigned to or used by the defendant;

13 (c) if not, the date it was last used; and

14 (d) the reason for the defendant not using it: i.e., was the IP address
15 blocked or blacklisted?
16

17 ANSWER: Defendant asserts the Time Frame, Irrelevancy, Trade Secret and
18 Overbreadth Objections.

19 _____ S/FLOYD E. IVEY _____

20
21 FLOYD E. IVEY

22 INTERROGATORY NO. 20: Does the Defendant claim that there is some person
23 or entity who is not a party to this lawsuit within the meaning of RCW 4.22.070
24 whose fault is claimed to have caused or contributed to the incident made the subject
25 of this lawsuit and/or Plaintiff's damages, and/or some person or entity who is not
26 a party to this lawsuit who caused or contributed to the alleged violation of RCW
27 19.190 and/or RCW 19.86? If so, please provide the following:
28

1 a. State the name and address of each person or entity that defendant
2 claims caused any of Plaintiff's damages.

3 b. With regard to each such person or entity identified in response to the
4 preceding question, please state:

5 (i) All facts you rely upon in making this claim;

6 (ii) The names and addresses of all witnesses you rely upon in making
7 such claim;

8
9 ANSWER: Defendant asserts the Ambiguity Objection. Given that Plaintiff has
10 failed to properly identify the thousands of emails that Plaintiff allegedly received,
11 Defendant is prejudiced by being unable to determine, at this time, the identity of
12 any person or entity who is not a party to this lawsuit whose fault is claimed to have
13 caused or contributed to Plaintiff's alleged damages.

14 _____ S/FLOYD E. IVEY _____

15 FLOYD E. IVEY

16 INTERROGATORY NO. 21: Has the defendant sold products and/or services to
17 residents of Washington State via the internet? If so, please identify the number of
18 Washington State residents that it has sold products and/or services to, what the
19 nature of the product or service was, and the number of such products and/or
20 services.

21 ANSWER: Defendant asserts the Irrelevancy, Trade Secret, Undue Burden and
22 Overbreadth Objections. Subject to and without waiving these objections,
23 Defendant has sold products and/or services to residents of Washington State via the
24 Internet.

25 _____ S/FLOYD E. IVEY _____

26 FLOYD E. IVEY

27 INTERROGATORY NO. 22: Identify any data that has been deleted, physically
28 destroyed, discarded, damaged (physically or logically), or overwritten, whether
pursuant to a document retention policy or otherwise, by the defendant since the

1 commencement of this litigation. Specifically identify those documents that relate
2 to or reference the subject matter of the above referenced litigation.

3 ANSWER: Defendant asserts the Irrelevancy, Overbreadth, Ambiguity and Undue
4 Burden Objections. Interrogatory No. 22 is intended to harass Impulse. Further,
5 Interrogatory No. 22 is irrelevant and will not lead to discovery of admissible
6 evidence relative to Plaintiff's Complaint. Bushman v. New Holland, 83 Wn. 2d
7 429, 433-34 (1974); Felix A. Thillet, Inc. v. Kelly-Springfield Tire Co., 41 F.R.D.
8 55 (D.P.R. 1966).

9 _____ S/FLOYD E. IVEY _____

10 FLOYD E. IVEY

11 INTERROGATORY NO. 23: Identify all individuals who have worked for the
12 defendant for the period January 1, 2002, to the present. For each state:

13 (a) name and address(es);

14 (b) dates of employment;

15 (c) job title(s);

16 (d) job responsibilities;

17 (e) employment status (i.e., employee, independent contractor); and

18 (f) reason for termination of employment relationship, if applicable.

19
20
21 ANSWER: Defendant asserts the Irrelevancy, Time Frame, Undue Burden and
22 Overbreadth Objections. Interrogatory No. 23 is irrelevant and will not lead to
23 discovery of admissible evidence relative to Plaintiff's Complaint. Bushman v. New
24 Holland, 83 Wn. 2d 429, 433-34 (1974); Felix A. Thillet, Inc. v. Kelly-Springfield
25 Tire Co., 41 F.R.D. 55 (D.P.R. 1966).

26 _____ S/FLOYD E. IVEY _____

27 FLOYD E. IVEY

1 INTERROGATORY NO. 24: Identify all email systems in the defendant's use,
2 including but not limited to the following:

- 3 (a) List all email software and versions presently and previously used by
4 you and the dates of use, including private and custom developed
5 applications, commercial applications, "spamware," freeware and
6 shareware;
- 7 (b) Identify all hardware that has been used or is currently in use as a
8 server for the email system including its name;
- 9 (c) Identify the specific type of hardware that was used as terminals into
10 the email system (including home PC's, laptops, desktops, cell phones,
11 personal digital assistants [PDA's], etc.) and its current location;
- 12 (d) State how many users there have been on each email system (delineate
13 between past and current users);
- 14 (e) State whether the email is encrypted in any way and list all passwords
15 for all users;
- 16 (f) Identify all users known to you that have generated email related to the
17 subject matter of this litigation; and
- 18 (g) Identify all email known to you (including creation date, recipient(s)
19 and sender) that relate to, reference, or are relevant to the subject
20 matter of this litigation.

21 ANSWER: Defendant asserts the Irrelevancy, Ambiguity, Trade Secret, Undue
22 Burden and Overbreadth Objections. Interrogatory No. 24 is irrelevant and will not
23 lead to discovery of admissible evidence relative to Plaintiff's Complaint. Bushman
24 v. New Holland, 83 Wn. 2d 429, 433-34 (1974); Felix A. Thillet, Inc. v. Kelly-
25 Springfield Tire Co., 41 F.R.D. 55 (D.P.R. 1966). Subject to and without waiving
these objections, if Plaintiff will limit and clarify his request, Defendant will
consider the revised interrogatory.

26 _____ S/FLOYD E. IVEY _____

27 FLOYD E. IVEY

1
2 INTERROGATORY NO. 25: Identify all officers, directors and shareholders of the
3 defendant corporation from January 1, 2001 to the present.

4 ANSWER: Defendant asserts the Time Frame Objection. Subject to and without
5 waiving this objection, Jeff Goldstein, Greg Greenstein and Steve Wadley have been
6 Impulse officers, directors and shareholders from January 1, 2001 to the present.

7 _____ S/FLOYD E. IVEY _____

8 FLOYD E. IVEY
9
10

11 Pursuant to CR 26(g), Floyd E. Ivey certifies: That I am the attorney for the
12 party answering these discovery requests; that I have read the discovery requests
13 propounded to said answering party and the answers and objections, if any, thereto,
14 know the contents thereof and believe the same to be true.

15 S/FLOYD E. IVEY

16 _____
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28 Klein, Zelman, Rothermel & Dichter, LLP
485 Madison Avenue, 15th Floor
New York, New York 10022
(212) 935-6020
(212) 753-8101 (fax)

1
2 I hereby certify that a copy of the foregoing Defendant's Response to
3 Plaintiff's First Interrogatories were mailed this 9TH day of June, 2006, to:
4
5

6 Mr. Robert J. Siegel
7 Merkle, Siegel & Friedrichsen
8 1325 Fourth Ave., Suite 940
9 Seattle, WA 98101

Mr. Robert Pritchett
1952 Thayer Drive
Richland, WA 99354

10 Ms. Bonnie Gordon
11 9804 Buckingham Drive
Pasco, WA 99301

Ms. Emily Abbey
1407 2nd Ave. West, #608
Seattle, WA 98119

12 Mr. James Gordon, III
13 9804 Buckingham Drive
14 Pasco, WA 99301

Mr. Jonathan Gordon
9804 Buckingham Drive
Pasco, WA 99301

15 Ms. Jamila Gordon
16 9804 Buckingham Drive
17 Pasco, WA 99301

18 _____S/FLOYD E. IVEY_____
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COPY

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 9 Sean Moynihan, Esq.; Peter Glantz, Esq.
 10 485 Madison Avenue
 11 New York, New York 10022
 12 Attorneys for Defendant/Third Party Plaintiff
 13 Impulse Marketing Group, Inc.

14 **UNITED STATES DISTRICT COURT FOR THE**
 15 **EASTERN DISTRICT OF WASHINGTON**

17 JAMES S. GORDON, JR.,)	No. CV-04-5125-FVS
)	
18 Plaintiff,)	DEFENDANT'S
19 vs.)	SUPPLEMENTAL
)	RESPONSE TO PLAINTIFF'S
20 IMPULSE MARKETING GROUP,)	FIRST REQUEST FOR
21 INC.,)	PRODUCTION OF
22 Defendant)	DOCUMENTS
)	
23)	
24 IMPULSE MARKETING GROUP,)	
25 INC.,)	
26 Third-Party Plaintiff,s.)	
)	
27 BONNIE GORDON, et al.,)	
)	
28 Third-Party Defendants.)	

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3 **DEFENDANT'S SUPPLEMENTAL RESPONSE TO PLAINTIFF JAMES**

4 **GORDON'S FIRST REQUEST FOR THE PRODUCTION OF**
5 **DOCUMENTS**

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7 Defendant, Impulse Marketing Group, Inc. ("Impulse" or "Defendant"),
8 pursuant to Rule 26(e) of the Federal Rules of Civil Procedure, hereby supplements
9 its response to plaintiff, James Gordon's ("Plaintiff" or "Gordon") First Request For
10 the Production of Documents ("First Request") as follows:

11 **PRELIMINARY STATEMENT**

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13 Impulse's supplemental responses are made without in any way waiving
14 either: (a) the right to object on the grounds of competency, relevance, materiality,
15 hearsay or any other proper ground, to the use of any information provided in these
16 responses for any purpose in any stage or proceeding in this or any other action; (b)
17 the right to object on any and all grounds, at any time, to any discovery procedure
18 relating to the subject matter of these documents; or (c) the right to assert the
19 attorney-client privilege, the work-product doctrine, or any other privilege or right.
20 Impulse has not completed its discovery or factual investigation in this action.
21 Accordingly, the supplemental responses set forth herein are provided without
22 prejudice to Impulse's right to add, modify, or otherwise change or amend the
23 responses herein in accordance with Rule 26(e).
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GENERAL OBJECTIONS

1. Impulse objects to each First Request For Production of Documents to the extent that it seeks material or information that is privileged as an attorney-client communication. This objection hereinafter will be referred to as the “Attorney-Client Privilege Objection.”

2. Impulse objects to each First Request For Production of Documents to the extent that it seeks material or information prepared by or developed at the direction of counsel insofar as it is protected and privileged as attorney work product. This objection hereinafter will be referred to as the “Attorney Work Product Objection.”

3. Impulse objects to each First Request For Production of Documents to the extent that it seeks information that is protected as being prepared in anticipation of litigation or for trial. This objection hereinafter will be referred to as the “Material Prepared in Anticipation of Litigation Objection.”

4. Impulse objects to each First Request For Production of Documents to the extent that it seeks information irrelevant to the parties' claims or defenses in this case. This objection hereinafter will be referred to as the "Irrelevancy Objection."

5. Impulse objects to each First Request For Production of Documents to

1 the extent that it calls for information that would impose a vexatious and undue
2 burden on the grounds that the request is oppressive and/or is intended to harass the
3
4 Impulse. This objection hereinafter will be referred to as the "Undue Burden
5 Objection."

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7 6. Impulse objects to each First Request For Production of Documents to
8 the extent that it is vague, ambiguous, or otherwise lacks sufficient precision to
9 permit a response. This objection hereinafter will be referred to as the "Ambiguity
10 Objection."

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12 7 Impulse objects to each First Request For Production of Documents to
13 the extent that it seeks information outside the allegations of the Complaint in this
14 action. This objection hereinafter will be referred to as the "Overbreadth
15 Objection."

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18 8. Impulse objects to each First Request For Production of Documents to
19 the extent that it seeks information that is in Plaintiff's possession. This objection
20 hereinafter will be referred to as the "Plaintiff's Possession Objection."

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22 9. Impulse objects to each First Request For Production of Documents to
23 the extent that it repeats a request made elsewhere in Plaintiff's Demand. This
24 objection hereinafter will be referred to as the "Redundancy Objection."
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1 10. Impulse objects to each First Request For Production of Documents to
2 the extent that it seeks information relating to unspecified periods of time outside
3 the scope of Plaintiff's Complaint. This objection hereinafter will be referred to as
4 the "Time Frame Objection."

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7 11. Impulse objects to each First Request For Production of Documents to
8 the extent that it seeks information that constitutes a trade secret or proprietary
9 information. This objection hereinafter will be referred to as the "Trade Secret
10 Objection."

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12 12. Defendant objects to Plaintiff's First Request insofar as it improperly
13 calls for, or presupposes, a conclusion of law. This objection hereinafter will be
14 referred to as the "Legal Conclusion Objection."

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17 13. Insofar as any request seeks information falling within the scope of
18 the foregoing General Objections, except as provided above, it is specifically
19 noted below by reference to the General Objection defined herein. To the extent
20 an answer is required to a request for admission for which an objection is lodged,
21 it shall be deemed denied.
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24 **SUPPLEMENTAL RESPONSE AND OBJECTIONS TO PLAINTIFF'S**
25 **FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**
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27 REQUEST FOR PRODUCTION OF DOCUMENTS NO. 1: Pursuant to CR 34,
28 please produce copies of all policies of insurance, including the declaration page,

1 all endorsements, all exclusions, whether manuscripted or not, referred to and/or
2 identified in your answer to Plaintiff's First Interrogatories No. 1.

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4 RESPONSE: Defendant asserts the Overbreadth Objection. Subject to and
5 without waiving this objection, supplemental responsive documents are produced
6 at Bates Nos. 000001-000003.

7 _____S/FLOYD E. IVEY_____

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9 FLOYD E. IVEY

10 REQUEST FOR PRODUCTION OF DOCUMENTS NO. 2: Please produce copies
11 of any and all documents or electronic data that indicated to you that any owner of
12 each of the email addresses listed in Plaintiff's First Interrogatories No. 8 granted
13 the defendant permission to send commercial email, and/or any document that
14 indicates any of the referenced email addresses "opted-in" to receive commercial
15 email from Defendants, or anyone on their behalf.

16 RESPONSE: Defendant asserts the Time Frame, Ambiguity, Plaintiff's
17 Possession and Overbreadth Objections. Plaintiff's Request For Production of
18 Documents No. 2 is ambiguous as to the term "defendants" given that Impulse is the
19 only named defendant in this lawsuit. Plaintiff lacks standing to request documents
20 regarding those email addresses not belonging to Plaintiff. In connection with the
21 allegations contained in Plaintiff's Complaint, Impulse, upon information and belief,
22 did not itself send any emails to Plaintiff's email address. Upon information and
23 belief, Impulse had no knowledge that noncompliant emails would be sent to
24 Plaintiff's email address. Further, Impulse implements a multi-point business
25 practice to ensure compliant email marketing by its third-party marketers including,
26 but not limited to, obtaining express representations and warranties from its third-
27 party marketers that said third-party marketers will only transmit emails that comply
28 with any and all state and federal laws such as the CAN-SPAM Act of 2003 and
applicable state deceptive marketing statutes. Subject to and without waiving these
objections, Defendant will consider responding to a clarified version of this
document request.

_____S/FLOYD E. IVEY_____

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28 FLOYD E. IVEY

1 REQUEST FOR PRODUCTION OF DOCUMENTS NO. 3: Pursuant to CR 34,
2 please produce at the offices of counsel for Plaintiff within thirty days of your
3 receipt of this pleading, copies of any and all contracts, agreements, correspondence,
4 or written or electronic communication of any kind, between each defendant and any
person or entity listed in your Answer to Plaintiff's First Interrogatories No. 13.

5 RESPONSE: Defendant asserts the Ambiguity, Time Frame, Trade Secret and
6 Overbreadth Objections. Plaintiff's Request For Production of Documents No. 3 is
7 ambiguous as to the terms "each defendant" given that Impulse is the only named
8 defendant in this lawsuit. Subject to and without waiving this objection,
supplemental responsive documents are produced at Bates Nos. 000004-000013.

9 _____S/FLOYD E. IVEY_____

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11 FLOYD E. IVEY

12 REQUEST FOR PRODUCTION OF DOCUMENTS NO. 4: Pursuant to CR 34,
13 please produce at the offices of counsel for Plaintiff within thirty days of your
14 receipt of this pleading, copies of any contracts, agreements, correspondence, or
15 written or electronic communication of any kind, between any defendant and any
16 person or entity owning any internet domain name listed in your Answer to
17 Plaintiff's First Interrogatories No. 17 (b) that establishes your or any person or
18 entity listed in your Answer to Plaintiff's First Interrogatories No. 13's permission
19 to use that internet domain name to send commercial electronic mail using that
20 domain name, and any and all contracts, agreements, correspondence, or written or
electronic communication of any kind from the owners of any third party domain
name that establishes permission for the defendant to send commercial electronic
mail to.

21 RESPONSE: Defendant asserts the Irrelevancy, Ambiguity, Trade Secret and
22 Overbreadth Objections.

23 _____S/FLOYD E. IVEY_____

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25 FLOYD E. IVEY

26 REQUEST FOR PRODUCTION OF DOCUMENTS NO. 5: Produce copies of all
27 documents relating to the maintenance of the corporate entity of the defendant, if

1 applicable, including but not limited to, articles of incorporation, annual reports,
2 business licenses, and corporate minute books.

3 RESPONSE: Supplemental responsive documents are produced at Bates No. 14.

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5 S/FLOYD E. IVEY _____

6 FLOYD E. IVEY

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8 REQUEST FOR PRODUCTION OF DOCUMENTS NO. 6: Produce all state, and
9 federal tax returns filed by the defendant for the tax years 2002 to present, including
10 but not limited to copies of signed tax returns, proof of payment and all
correspondence relating thereto.

11 RESPONSE: Defendant asserts the Irrelevancy, Time Frame, Trade Secret and
12 Overbreadth Objections. Request For Production of Documents No. 6 will not lead
13 to discovery of admissible evidence relative to Plaintiff's Complaint. Bushman v.
14 New Holland, 83 Wn. 2d 429, 433-34 (1974); Felix A. Thillet, Inc. v. Kelly-
15 Springfield Tire Co., 41 F.R.D. 55 (D.P.R. 1966). Defendant further objects to this
16 request insofar as the Ninth Circuit recognizes a public policy against unnecessary
17 public disclosure of tax returns. Aliotti v. Senora, 217 F.R.D. 496, 497 (N.D. Cal.
18 2003); Premium Serv. Corp. v. Sperry & Hutchinson Co., 511 F.2d 225, 229 (9th Cir.
19 1975). Moreover, in Kayner v. City of Seattle, 2006 WL 482072 (W.D. Wash.), the
20 Court denied a party's motion to compel tax returns, rejecting that party's argument
21 that the tax returns were relevant because they may identify other sources of income
and potential witnesses, and finding no compelling need for the materials sought
given that such information could be obtained through less obtrusive means. In light
of the foregoing Ninth Circuit decisions upholding the nondisclosure of a party's tax
returns, Defendant is withholding production of its tax returns.

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23 S/FLOYD E. IVEY _____

24 FLOYD E. IVEY

25 REQUEST FOR PRODUCTION OF DOCUMENTS NO. 7: Produce copies of all
26 monthly, quarterly, or yearly profit and loss statements or balance sheets for the
27 defendant for the period between 2002 and the present.

1 RESPONSE: Defendant asserts the Irrelevancy, Time Frame, Trade Secret and
2 Overbreadth Objections. Request For Production of Documents No. 7 will not lead
3 to discovery of admissible evidence relative to Plaintiff's Complaint. Bushman v.
4 New Holland, 83 Wn. 2d 429, 433-34 (1974); Felix A. Thillet, Inc. v. Kelly-
5 Springfield Tire Co., 41 F.R.D. 55 (D.P.R. 1966). Moreover, Defendant reiterates
6 its objections set forth in response to Request For Production of Documents No. 6
7 hereinabove.

8 _____ S/FLOYD E. IVEY _____

9 FLOYD E. IVEY

10 REQUEST FOR PRODUCTION OF DOCUMENTS NO. 8: Produce a copy of the
11 *curriculum vitae* or statement of qualifications for each expert you have retained to
12 testify on behalf of the defendant at trial in this matter.

13 RESPONSE: Impulse has not retained an expert to testify as yet but reserves
14 it's right to do so in accordance with the Federal Rules of Civil Procedure and the
15 applicable revised scheduling order.

16 _____ S/FLOYD E. IVEY _____

17 FLOYD E. IVEY

18 REQUEST FOR PRODUCTION OF DOCUMENTS NO. 9: Pursuant to CR 34,
19 please produce at the offices of counsel for Plaintiff within thirty days of your
20 receipt of this pleading, a copy of any document referring to any policy of document
21 or data destruction inventory/log/schedule referred to in your response to Plaintiff's
22 First Interrogatories No.

23 RESPONSE: Defendant asserts the Irrelevancy, Ambiguity, Time Frame,
24 Undue Burden, Trade Secret and Overbreadth Objections. Request For Production
25 of Documents No. 9 is ambiguous in that said request does not identify the
26 interrogatory number Plaintiff references. Further, Request For Production of
27 Documents No. 9 will not lead to discovery of admissible evidence relative to
28 Plaintiff's Complaint. Bushman v. New Holland, 83 Wn. 2d 429, 433-34 (1974);
Felix A. Thillet, Inc. v. Kelly-Springfield Tire Co., 41 F.R.D. 55 (D.P.R. 1966).
There are no documents responsive to this request in Defendant's possession,
custody or control.

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2 _____S/FLOYD E. IVEY_____

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4 FLOYD E. IVEY

5 REQUEST FOR PRODUCTION OF DOCUMENTS NO. 10: Please produce
6 copies of all correspondence and/or complaints from SPAMHAUS.ORG and/or any
7 and all other entities that monitor spam activity on the internet.

8 RESPONSE: Defendant asserts the Irrelevancy, Plaintiff's Possession and
9 Overbreadth Objections. Request For Production of Documents No. 10 will not lead
10 to discovery of admissible evidence relative to Plaintiff's Complaint. Bushman v.
11 New Holland, 83 Wn. 2d 429, 433-34 (1974); Felix A. Thillet, Inc. v. Kelly-
12 Springfield Tire Co., 41 F.R.D. 55 (D.P.R. 1966). Subject to and without waiving
13 these objections, upon information and belief, Defendant has not received any
14 formal correspondence and/or complaints from Spamhaus.org. Therefore, there are
15 no documents responsive to this request in Defendant's possession, custody or
16 control.

17 _____S/FLOYD E. IVEY_____

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19 FLOYD E. IVEY

20 REQUEST FOR PRODUCTION OF DOCUMENTS NO. 11: Provide copies of
21 all approved ad copy, and other related materials (and the dates of the mailing
22 campaigns using each ad) from Commonwealth Marketing Group since January
23 2003.

24 RESPONSE: Defendant asserts the Irrelevancy, Time Frame, Plaintiff's
25 Possession and Overbreadth Objections.

26 _____S/FLOYD E. IVEY_____

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28 FLOYD E. IVEY

Pursuant to CR 26(g), Floyd E. Ivey certifies: That I am the attorney for
the party answering these discovery requests; that I have read the discovery

1 requests propounded to said answering party and the answers and objections, if
any, thereto, know the contents thereof and believe the same to be true.

2 S/FLOYD E. IVEY

3 Liebler, Ivey, Conner, Berry & St. Hilaire
4 By: Floyd E. Ivey
1141 N. Edison, Suite C
5 P.O. Box 6125
Kennewick, Washington 99336
6 Local Counsel for Defendant
Impulse Marketing Group, Inc.

7 S/Sean Moynihan, Peter Glantz

8 Sean A. Moynihan
9 Peter J. Glantz
Klein, Zelman, Rothermel & Dichter, LLP
10 485 Madison Avenue, 15th Floor
New York, New York 10022
11 (212) 935-6020
12 (212) 753-8101 (fax)

13 I hereby certify that a copy of the foregoing Defendant's Supplemental
14 Response to Plaintiff's First Interrogatories were mailed this 9th day of June,
2006, to:

16 Mr. Robert J. Siegel
17 Merkle, Siegel & Friedrichsen
1325 Fourth Ave., Suite 940
18 Seattle, WA 98101

Mr. Robert Pritchett
1952 Thayer Drive
Richland, WA 99354

19 Ms. Bonnie Gordon
9804 Buckingham Drive
20 Pasco, WA 99301

Ms. Emily Abbey
1407 2nd Ave. West, #608
Seattle, WA 98119

21 Mr. James Gordon, III
9804 Buckingham Drive
22 Pasco, WA 99301

Mr. Jonathan Gordon
9804 Buckingham Drive
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23 Ms. Jamila Gordon
9804 Buckingham Drive
24 Pasco, WA 99301

25 S/FLOYD E. IVEY
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